

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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E. JEAN CARROLL,

Plaintiff,

-against-

22-cv-10016 (LAK)

DONALD J. TRUMP,

Defendant.

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MEMORANDUM OPINION RE ANONYMOUS JURY

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LEWIS A. KAPLAN, *District Judge.*

Donald J. Trump is accused in this and a second very closely related civil case of having raped E. Jean Carroll in the mid 1990s and having defamed her in public statements in response to her rape accusation against him. He has denied the rape charge and disputes whether his statements are actionable.

The trial of this case will begin on April 25, 2023.¹ On March 11, 2023, the Court directed the parties to file any objections to trying the case before an anonymous jury.² Neither objected. Non-parties Daily News, L.P. (the “News”), and the Associated Press (the “AP”) oppose it. The matter is ripe for decision.

Facts

This is a unique case.

The defendant is a former president of the United States. He has been impeached twice although convicted on neither occasion. He now is a candidate for election to a second term. He has inspired strong opinions, both highly favorable and highly unfavorable. As will appear in more detail below, some individuals charged with crimes in connection with the January 6, 2020 events at the United States Capitol have argued that their actions were attributable to what the individuals perceived, rightly or wrongly, as incitement by Mr. Trump,³ a subject on which the Court

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The other case, which was set for trial on April 10, 2023, has been adjourned *sine die*.

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Dkt 84.

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E.g., Ryan J. Reilly, Jan. 6 rioter who said he wanted Trump’s ‘approval’ found guilty by jury, NBC NEWS, Apr. 14, 2022, <https://www.cnbc.com/2022/04/14/jan-6-rioter-who-said-he-wanted-trumps-approval-found-guilty-by-jury.html> (“A Donald Trump supporter who

expresses no view. The Final Report issued by the Select Committee to investigate the January 6th attack on the U.S. Capitol concluded that “the central cause of January 6th was one man, former President Donald Trump, whom many others followed.”⁴

Mr. Trump’s quite recent reaction to what he perceived as an imminent threat of indictment by a grand jury sitting virtually next door to this Court was to encourage “protest” and to urge people to “take our country back.”⁵ That reaction reportedly has been perceived by some as

told jurors that he was ‘following presidential orders’ when he stormed the U.S. Capitol on Jan. 6 was found guilty on Thursday after he admitted that he stole a coat rack and a bottle of liquor from the building.”); Shawna Chen, *Judge: Jan. 6 rioter who broke into Capitol followed “Trump’s instructions”*, AXIOS, Jan. 17, 2023, <https://wwwaxios.com/2023/01/18/jan6-capitol-riot-trump-instructions> (“A federal judge said Tuesday that a California woman who breached the U.S. Capitol during the Jan. 6 insurrection ‘followed then-President Trump’s instructions’ in breaking the law.”); Sabrina Willmer, *Proud Boys Vowed ‘Any Means Necessary’ to Keep Trump in Power, Jury Told*, BLOOMBERG, Jan. 12, 2023, <https://www.bloomberg.com/news/articles/2023-01-12/proud-boys-pledged-any-means-necessary-to-keep-trump-in-power-jury-told?leadSource=uverify%20wall> (defense attorney in Proud Boys trial “claimed it was Trump who ‘unleashed the mob’ that breached the Capitol with his fiery speech to supporters earlier that morning”); Kyle Cheney, *Jan. 6 defendant wants jurors to blame Trump, not him, for decision to breach Capitol*, POLITICO, Apr. 13, 2022, <https://www.politico.com/news/2022/04/13/january-6-defendant-donald-trump-00025019> (“Though dozens of defendants have argued in court filings that they believed Trump had authorized the assault on the Capitol, judges have largely rejected that contention and said rioters should be held to account for their own actions. But whether a jury sees that argument differently will be an important test that could reverberate across hundreds of other cases.”).

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Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol, 117th Cong. H.R. Rep. 117-663 (Dec. 22, 2022).

This Court expresses neither agreement nor disagreement with that conclusion.

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E.g., Josh Dawsey, Shayna Jacobs, Carol D. Leonnig, Justine McDaniel, *Trump calls for protests of what he claims is his imminent arrest*, WASHINGTON POST, Mar. 18, 2023, <https://www.washingtonpost.com/nation/2023/03/18/trump-protest-arrest-new-york/>.

incitement to violence.⁶ And it bears mention that Mr. Trump repeatedly has attacked courts, judges, various law enforcement officials and other public officials, and even individual jurors in other matters.⁷

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E.g., James Bickerton, *Donald Trump's Protest Call to Arms Sparks Jan. 6 Comparisons*, NEWSWEEK, Mar. 18, 2023, <https://www.newsweek.com/donald-trumps-protest-call-arms-sparks-jan-6-comparisons-1788702> (“A number of political commentators condemned Trump’s call for protest on social media, with several suggesting he was inciting violence and making an explicit comparison with the January 6 unrest.”).

To be clear, I do not make any finding or express any view as to the accuracy of any of the reports and allegations referenced herein. For purposes of this order, it matters not whether Mr. Trump incited violence in either a legal or a factual sense. The point is whether jurors will perceive themselves to be at risk.

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E.g., Lauren Sforza, *Trump attacks Georgia grand jury forewoman over media tour*, THE HILL, Feb. 22, 2023, <https://thehill.com/policy/national-security/3869576-trump-attacks-georgia-grand-jury-forewoman-over-media-tour/> (quoting Mr. Trump’s social media post, “Now you have an extremely energetic young woman, the (get this!) ‘foreperson’ of the Racist D.A.’s Special Grand Jury, going around and doing a Media Tour revealing, incredibly, the Grand Jury’s inner workings & thoughts”); Peter Wade, *Trump Has Roger Stone Jurors Fearing for Their Safety: ‘It Seems Like Danger Is Coming to Me’*, ROLLING STONE, Apr. 16, 2020, <https://www.rollingstone.com/politics/politics-news/trump-roger-stone-jurors-fear-for-their-safety-985571/> (“All 12 of the jurors in the Roger Stone case have expressed fear in court filings on Wednesday. They worry they will continue to be harassed and they fear for the safety of themselves and their families if their identities are revealed. According to The National Law Journal, jurors cited tweets from President Trump and remarks from conspiracy theorist Alex Jones as the reason ‘the threats to the jurors’ safety and privacy persist’ after the trial ended in November.”); Brennan Center for Justice, *In His Own Words: The President’s Attacks on the Courts* (last updated Feb. 14, 2020), <https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts>; Jason Szep and Linda So, *Trump campaign demonized two Georgia election workers – and death threats followed*, REUTERS, Dec. 1, 2021, <https://www.reuters.com/investigates/special-report/usa-election-threats-georgia/> (“Desperate to overturn his election loss, Donald Trump and his team spun a sprawling voter-fraud fiction, casting two rank-and-file election workers, a mother and her daughter, as the main villains. The women endured months of death threats and racist taunts – and one went into hiding.”); Stuti Mishra, *Trump’s fresh attacks on Georgia election workers could land him in legal trouble, expert says*, THE INDEPENDENT, Jan. 5, 2023, <https://www.independent.co.uk/news/world/americas/us-politics/trump-georgia-election-ruby-freeman-b2256377.html> (“Mr Trump has used his social media platform, Truth Social, to fuel conspiracy theories aimed at Georgia official Ruby Freeman – who has been a repeated subject of the former president’s attacks since the 2020 election.”).

In addition to Mr. Trump's past words and actions together with perceptions of them by many people, it is highly relevant that this case already has been the subject of widespread media coverage. Even the most modest developments have attracted a good deal of attention.⁸ That coverage is likely only to increase once the trial is imminent or in process.

In these circumstances, this Court is obliged to consider the likely effect on jurors of the matters just described, similar events in the relatively recent past, and the likely future course of events, including the inevitable extensive media coverage. And it cannot properly ignore the significant risk that jurors selected to serve in this case will be affected by concern that they could be targeted for unwanted media attention, outside pressure, and retaliation and harassment from persons unhappy with any verdict that might be returned. Accordingly, the Court *sua sponte* raised the question whether protection of jurors' identities and addresses would be appropriate. As noted, the parties do not object to an anonymous jury. Only the News and the AP have done so on the

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E.g., Dan Berman, *Trial in one of E. Jean Carroll's rape defamation cases against Trump is delayed*, CNN, Mar. 20, 2023, <https://www.cnn.com/2023/03/19/politics/e-jean-carroll-trump-defamation-trial/index.html>; Erik Larson, *Trump May Face Anonymous Jury in High-Profile Defamation Trial*, BLOOMBERG, Mar. 11, 2023, <https://www.bloomberg.com/news/articles/2023-03-11/donald-trump-e-jean-carroll-trial-may-get-anonymous-jury#xj4y7vzkg>; Gustaf Kilander, *Two other Trump accusers can testify in E. Jean Carroll rape defamation case as Access Hollywood tape admitted*, THE INDEPENDENT, Mar 10, 2023, <https://www.independent.co.uk/news/world/americas/us-politics/trump-e-jean-carroll-rape-lawsuit-b2298323.html>; Chris Pandolfo, Marta Dhanis, *Judge allows Trump Access Hollywood tape in E. Jean Carroll lawsuit*, FOX NEWS, Mar 10, 2023, <https://www.foxnews.com/politics/judge-allows-trump-access-hollywood-tape-e-jean-carroll-lawsuit>; Nina Pullano, *In Trump rape lawsuit, judge weighs 'quid pro quo' DNA offer*, COURTHOUSE NEWS SERVICE, Feb. 10, 2023, <https://www.courthousenews.com/in-trump-rape-lawsuit-judge-weighs-quid-pro-quo-dna-offer/>; Dan Mangan, *Trump mistook rape accuser E. Jean Carroll for ex-wife Marla Maples in deposition about photo*, CNBC, Jan. 18, 2023, <https://www.cnbc.com/2023/01/19/trump-believed-rape-accuser-e-jean-carroll-was-wife-in-photo.html>; Jared Gans, *Judge rejects Trump's motion to dismiss E. Jean Carroll sexual assault lawsuit*, THE HILL, Jan. 13, 2023, <https://thehill.com/regulation/court-battles/3812997-judge-rejects-trumps-motion-to-dismiss-e-jean-carroll-sexual-assault-lawsuit/>.

ground that the identities of individual jurors is within the presumption of public access to court proceedings and that they must be provided to the media and the public.

Discussion

Anonymous juries historically have been ordered in criminal cases in which the risk of tampering with or violent retaliation against jurors by criminal defendants or their confederates was palpable, most often in terrorism and organized crime cases. The impetus for the use of anonymous juries invariably or, at least, almost always has arisen in the prosecution of such cases. And this case does not fit that mold. But that is only the beginning of the discussion, not the end.

A court in an appropriate case has “broad discretion to take such steps as may be necessary and appropriate to permit the jury to concentrate on the trial proceedings and to evaluate the evidence in an atmosphere free from apparent threat or danger, so long as those steps do not violate the defendant’s fundamental rights.”⁹ It may order an anonymous jury “[w]hen genuinely called for and when properly used”¹⁰ – that is, ““upon (a) concluding that there is strong reason to believe the jury needs protection, and (b) taking reasonable precautions to minimize any prejudicial effects on the defendant and to ensure that his fundamental rights are protected.””¹¹ It may do so on

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United States v. Maldonado-Rivera, 922 F.2d 934, 971 (2d Cir. 1990).

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United States v. Kadir, 718 F.3d 115, 120 (2d Cir. 2013) (quoting *United States v. Pica*, 692 F.3d 79, 88 (2d Cir. 2012)).

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Id. (quoting *Pica*, 692 F.3d at 88); *see also United States v. Paccione*, 949 F.2d 1183, 1192 (2d Cir. 1991); *United States v. Thomas*, 757 F.2d 1359, 1364-65 (2d Cir. 1985).

its own motion.¹² And where there is a genuine need for an anonymous jury and reasonable precautions are taken, its use does not violate either the common law or the Constitution, even in a criminal case.¹³

As the lack of any objection from either Ms. Carroll or Mr. Trump suggests, this is such a case. If jurors' identities were disclosed, there would be a strong likelihood of unwanted media attention to the jurors, influence attempts, and/or of harassment or worse of jurors by supporters of Mr. Trump.¹⁴ Indeed, Mr. Trump himself has made critical statements on social media regarding the grand jury foreperson in Atlanta, Georgia, and the jury foreperson in the Roger Stone criminal case.¹⁵ And this properly may be viewed in the context of Mr. Trump's many statements

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Indeed, in what reportedly was the first case in the United States to require jury anonymity, the judge, a former member of this Court, ordered anonymity on his own motion. Abraham Abramovsky and Jonathan I. Edelstein, *Anonymous Juries: In Exigent Circumstances Only*, 13 ST. JOHN'S J. LEGAL COMMENT 457, 457-58 (1999). His action was upheld on appeal. *United States v. Barnes*, 604 F.2d 121, 140-43 (2d Cir. 1979).

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E.g., *Thomas*, 757 F.2d at 1364-65; *Barnes*, 604 F.2d at 141-43.

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During a previous investigation of Mr. Trump, law enforcement officials prepared for potentially violent demonstrations by his supporters. E.g., David Klepper, *Trump's angry words spur warnings of real violence*, AP, Aug. 16, 2022, <https://apnews.com/article/ghislaine-maxwell-social-media-donald-trump-mar-a-lago-31741bb13f708ee68b523592623341eb> ("A growing number of ardent Donald Trump supporters seem ready to strike back against the FBI or others who they believe go too far in investigating the former president. Law enforcement officials across the country are warning and being warned about an increase in threats and the potential for violent attacks on federal agents or buildings in the wake of the FBI's search of Trump's Mar-a-Lago home.").

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E.g., Sforza, *supra* n.6 (quoting Mr. Trump's social media post, "Now you have an extremely energetic young woman, the (get this!) 'foreperson' of the Racist D.A.'s Special Grand Jury, going around and doing a Media Tour revealing, incredibly, the Grand Jury's inner workings & thoughts"); Wade, *supra* n.6 ("All 12 of the jurors in the Roger Stone case have expressed fear in court filings on Wednesday. They worry they will continue to be harassed and they fear for the safety of themselves and their families if their identities are revealed. According to The National Law Journal, jurors cited tweets from President Trump

regarding individual judges, the judiciary in general, and other public officials, as well as what reports have characterized as “violent rhetoric” by Mr. Trump including before his presidency.¹⁶ In these circumstances, the common law and constitutional arguments made by the News and the AP are unpersuasive.

To be sure, as the News and the AP argue, there is a presumptive right of access by the public to civil proceedings. The Court assumes, without deciding, that the right of access usually extends to the identities of jurors. But the presumption of access, even assuming it applies to jurors’ names, is not an unqualified *right* to that information. And the reliance by the objectors on a quotation from *United States v. Paccione*,¹⁷ in which the Second Circuit described some past cases in which anonymous juries have been appropriate, is unpersuasive as it omits the Circuit’s statement

and remarks from conspiracy theorist Alex Jones as the reason ‘the threats to the jurors’ safety and privacy persist’ after the trial ended in November. . . . [A]round the time of Stone’s guilty verdict, Trump and others latched on to a Facebook post written by the jury’s forewoman, where she expressed kind words for the prosecutors in the case, bashed Trump, and called his supporters racists. Trump called her biased in his tweets and said at a rally that Stone’s verdict was a ‘miscarriage of justice.’”); Dan Mangan, *Trump slams Roger Stone juror right before she testifies at retrial request hearing*, CNBC, Feb. 26, 2020, <https://www.cnbc.com/2020/02/25/roger-stone-judge-cites-trump-tweet-on-juror-in-hearing-on-new-trial.html> (“[T]he judge barred the public from the courtroom for that hearing [for a new trial], saying that tweets by Trump and others may have raised the risk of harassment to jurors who might be testifying there.”).

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See supra n.7. *See also* Ivana Saric, *The times Trump has advocated for violence*, AXIOS, May 2, 2022, <https://wwwaxios.com/2022/05/02/trump-call-violence-presidency>; John Cassidy, *Trump’s Threats of Violence Are Too Dangerous to Disregard*, THE NEW YORKER, Oct. 4, 2022, <https://www.newyorker.com/news/our-columnists/trumps-threats-of-violence-are-too-dangerous-to-disregard>; Fabiola Cineas, *Donald Trump is the accelerant: A comprehensive timeline of Trump encouraging hate groups and political violence*, VOX, Jan. 9, 2021, <https://www.vox.com/21506029/trump-violence-tweets-racist-hate-speech>.

The Court expresses no view, one way or another, as to whether Mr. Trump’s statements and/or actions constitute “violent rhetoric.”

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949 F.2d 1183 (2d Cir. 1991).

of the overriding principle. The controlling standard is this: “In general, the court should not order the empaneling of an anonymous jury without (a) concluding that there is strong reason to believe the jury needs protection, and (b) taking reasonable precautions to minimize any prejudicial effects on the defendant and to ensure that his fundamental rights are protected.”¹⁸

On the basis of the unprecedented circumstances in which this trial will take place, including the extensive pretrial publicity and a very strong risk that jurors will fear harassment, unwanted invasions of their privacy, and retaliation by virtue of the matters referred to above, the Court finds that there is strong reason to believe that the jury needs the protection prescribed below. No less restrictive alternative has even been suggested. The presumption of access to juror names is overcome by this risk.

Conclusion

For the foregoing reasons, (1) the names, addresses, and places of employment of prospective jurors on the *voir dire* panel, as well as jurors who ultimately are selected for the petit jury, shall not be revealed, (2) petit jurors shall be kept together during recesses and the United States Marshal Service (“USMS”) shall take the petit jurors to, or provide them with, lunch as a group throughout the pendency of the trial, and (3) at the beginning and end of each trial day, the petit jurors shall be transported together or in groups from one or more undisclosed location or locations at which the jurors can assemble or from which they may return to their respective residences.

SO ORDERED.

Dated: March 23, 2023



Lewis A. Kaplan
United States District Judge

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Id. at 1192.